

**BEFORE THE IMMIGRATION ENFORCEMENT REVIEW BOARD
STATE OF GEORGIA**

D. A. KING,)	
)	
Complainant,)	
)	Complaint No.: 2016-01
v.)	
)	
CITY OF ATLANTA, MAYOR KASIM)	
REED, and DEPARTMENT OF FINANCE)	
OFFICE OF REVENUE,)	
)	
Respondents.)	
_____)	

SANCTION RESPONSE OF THE CITY OF ATLANTA

COMES NOW Respondents, the City of Atlanta (the "City"), Atlanta Mayor Kasim Reed, and the City of Atlanta Department of Finance Office of Revenue (collectively, the "City"), pursuant to Rule 291-2-.04 (1) of the Immigration Enforcement Review Board (the "IERB" or "Board"), and submit this Sanction Response to the Board's Initial Decision dated April 18, 2017, wherein the Board found the City to have violated an eligibility status provision of O.C.G.A. § 50-36-1, pertaining to Systemic Alien Verification of Entitlement ("SAVE") authorization to administer public benefits. Specifically, the Board found the City in violation for not requesting or obtaining SAVE verification from the Atlanta Historical Society, Inc. ("AHS") before renewing its non-profit business license, which was originally issued prior to enactment of the relevant statute. Having read and considered the Board's Initial Decision and request that the City take remedial action to correct the aforementioned violation, the City responds as follows:

I. Statement of Facts

On or about July 25, 2016, Complainant requested E-Verify and SAVE affidavits received by the City in conjunction with issuance and renewal of a business license for AHS. The City

provided Complainant with printouts of documents relevant to the non-profit “business license” originally issued to AHS in 1995 and subsequently renewed on an automatic, annual basis, but did not have E-Verify and SAVE affidavits.¹ Not having received the requested documents, Complainant initiated the above-styled action on August 18, 2016, alleging that the City was in violation of O.C.G.A. §50-36-1, for failing to verify the eligibility status of an applicant for a public benefit, to wit: renewing a “business license” for the Atlanta Historical Society (“AHS”) without having obtained a SAVE verification.

An Initial Hearing on Complaint 2016-01 (the “Complaint”) was held on November 10, 2016, after which the Board voted to find the City in violation of O.C.G.A. § 50-36-1. The Board served the City with a copy of its Initial Decision on December 5, 2016, and the City submitted its Sanction Response on January 4, 2017, asserting certain procedural and substantive errors. When the Board next convened on February 20, 2017, the City’s Sanction Response was addressed and it was determined this matter should be returned to the Initial Review phase. A second Initial Review was then held at that meeting and the Board voted to hold a new Initial Hearing.

A second Initial Hearing was then held on April 11, 2017. Board Chairman Benjamin Vinson and Board Members James Balli, Boyd Austin, and Phil Kent were physically present in the room, while Board Member Shawn Hanley was virtually present by telephone. The State’s Attorney, Mr. Russell D. Willard, with the Georgia Office of the Attorney General, was also physically present. The Board received testimony and evidence from the City for a second time

¹ As the City’s witness, Deputy Revenue Chief Felicia Daniel, testified, the document issued to qualified non-profit entities and reissued for subsequent years is merely a license equivalent that demonstrates the non-profit’s tax exempt status to prevent confusion for code enforcement purposes. Thus, references in this response to the document the City issues to non-profit entities as a “license” or “business license” are solely for brevity and not a concession that the document actually is a public benefit per O.C.G.A. § 50-36-1(a)(4) or a regulatory imposition on non-profit entities in violation of O.C.G.A. § 48-13-13(5).

and, despite the fact that the Complainant submitted no evidence and called no witnesses, without acknowledging or ruling upon the City's Motion for Directed Verdict, and against the advice of the State's Attorney, the Board voted to find the City in violation of O.C.G.A. § 50-36-1.²

The Board served the City with a written copy of the new Initial Decision on April 18, 2017. Therein, the Board requested that the City take remedial action to correct the above mentioned violation, including, but not limited to, obtaining SAVE documentation from AHS. As such, the City now submits this Sanction Response outlining the remedial actions it has taken at the Board's request and why sanctions should not be imposed.

II. Standard of Review

Pursuant to IERB Rule 291-2-.04 (1), if an initial decision finds that there has been a violation or failure to enforce an eligibility status provision, the public agency or employee shall have thirty (30) days from service of the initial decision to provide a sanction response to the review panel as to why sanctions should not be imposed and what, if any, remedial action has been undertaken. Prior to making a recommendation of sanctions for an alleged violation of O.C.G.A. § 50-36-1, IERB Rule 291-2-.04 (2) requires a finding that the remedial action taken to correct the violation was insufficient, *and* that the violation or failure to enforce the eligibility status provision was knowing and willful based upon a preponderance of the evidence presented at the initial hearing.

III. Analysis

While the City stands by the arguments and positions it has asserted before this Board thus far, it has nonetheless undertaken certain steps since last appearing before the Board on April 11, 2017, as a demonstration of the City's good faith intent to resolve the alleged violation. The City

² *Transcript of the Initial Hearing on Complaint 2016-01*, p. 56, lines 1-2; April 11, 2017.

does not intend the actions taken in response to the Initial Decision to be construed as an admission of liability; but rather, as a reflection of the City's earnest effort to acknowledge the request of the Board and to compromise. The City has a duty to advance the best interest of all Atlantans and, in this case, that is best accomplished by avoiding further litigation and the unnecessary expenses thereof. As such, the City asserts the following:

A. Sanctions should not be imposed because the City has taken sufficient remedial action by requesting and obtaining SAVE documentation from AHS.

The City has taken sufficient remedial action by requesting and obtaining SAVE documentation from AHS and all similarly situated non-profit entities. On or about February 20, 2017, the City requested that AHS submit SAVE documentation in support of its tax-exempt status and AHS complied. A copy of the SAVE affidavit the City obtained from AHS on May 10, 2017, is attached to this Response as Exhibit 'A'. The effect of the City's possession of the SAVE affidavit from AHS fully satisfies the request set forth by the Board and effectively renders the Complaint moot. Moreover, the City Office of Revenue has gone above and beyond the recommendation and request of the Board and asked for, and commenced collection of, updated SAVE and E-Verify documentation from all tax-exempt entities registered with the City, of which there are approximately 1,460.

B. Sanctions should not be imposed because the City has not engaged in a knowing and willful violation or failure to enforce the eligibility status provision, as shown by a preponderance of the evidence at the Initial Hearing.

Sanctions should not be imposed because the alleged violation or failure to enforce an eligibility status provision of O.C.G.A. § 50-36-1 was not the result of knowing or willful conduct on behalf of the City. It was undisputed at the Initial Hearing that the City has been collecting SAVE documentation from non-profit entities registered after O.C.G.A. §50-36-1 became

effective on July 1, 2011.³ And, as the City's chief witness testified, it remains, and always has been, the intent of the City to fully comply with State law on this issue.⁴

As the City explained, the situation giving rise to the Complaint at hand is unique for two (2) reasons which, in and of themselves, demonstrate that the City's alleged violation was unwilling and unknowing. First, the City explained why it sincerely believes the document which is issued to qualified non-profit entities and reissued for subsequent years is not a public benefit per O.C.G.A. § 50-36-1(a)(4), because it is merely a license equivalent that demonstrates the non-profit's tax exempt status. Second, the City pointed out that O.C.G.A. § 50-36-1 is unclear as to how it should be implemented when the recipient of an alleged public benefit applied before the statute became effective and still, in effect, continues to receive that benefit.⁵ As such, the City explained that it did not intend to purposefully disregard the law's requirements, but rather genuinely believes the statute was not intended to apply retroactively.⁶

It is clear from the Initial Decision the Board disagrees with the City's position as to both arguments; however, both were founded upon interpretations of the subject law for which there was no identifiable precedent and where clarification by the Board, in absence of the legislature's guidance, was sorely needed. Therefore, the subject violation could only be construed as willful and knowing if the City failed to comply with the Board's request *after* these essential interpretations of the law were provided, not before. As stated in Section II (A) above, in the time since the Board explained how it believes O.C.G.A. §50-36-1 should be interpreted and applied in

³ *Transcript of the Initial Hearing on Complaint 2016-01*, p. 34, lines 13-24; April 11, 2017.

⁴ *Id.* at p. 39, lines 13-15; p. 41, lines 2-4.

⁵ *See Id.* at p. 42, lines 19-24; p. 50, lines 9-18.

⁶ *See Id.* at p. 49-50, lines 25, 1-8.

this case the City has undertaken steps which fully satisfy the Board's request and effectively render the Complaint moot. Accordingly, there is no basis to find the City engaged in a willful or knowing violation of the law.

IV. CONCLUSION

For the reasons set forth above, the City asserts that it has undertaken sufficient remedial actions to satisfy the Board's request as stated in the April 11, 2017 Initial Decision. Equally, sanctions should not and cannot be imposed because the City did not engage in a knowing and willful violation. As such, the City moves the Board to dismiss the Complaint as moot or, in the alternative, enter a decision recommending no sanctions and conclude this matter.

Respectfully submitted this 18th day of May, 2017.



STEFANIE D. GRANT
Senior Assistant City Attorney
M. ALEXANDER HOPE JR.
Associate City Attorney

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SAVE AFFIDAVIT

AFFIDAVIT VERIFYING STATUS FOR CITY PUBLIC BENEFIT
PURSUANT TO O.C.G.A. § 50-36-1(E)(2)
SUBMITTED TO THE DEPT. OF FINANCE – OFFICE OF REVENUE

By executing this affidavit under oath, as an applicant for an Occupational Tax Certificate, [type of public benefit], as referenced in O.C.G.A. § 50-36-1, from the City of Atlanta, Georgia, the undersigned applicant verifies one of the following with respect to my application for a public benefit:

- 1) I am a United States citizen.
Please see link for acceptable forms of identification: <http://law.ga.gov/immigration-reports>
- 2) I am a legal permanent resident of the United States. **
Please see link for acceptable forms of identification: <http://law.ga.gov/immigration-reports>
- 3) I am a qualified alien or non-immigrant under the Federal Immigration and Nationality Act with an alien number issued by the Department of Homeland Security or other federal immigration agency.**
Please see link for acceptable forms of identification: <http://law.ga.gov/immigration-reports>

My alien number issued by the Department of Homeland Security or other federal immigration agency is:

The undersigned applicant also hereby verifies that he or she is 18 years of age or older and has provided at least one secure and verifiable document, as required by O.C.G.A. § 50-36-1(e)(1), with this affidavit.

The secure and verifiable document provided with this affidavit can best be classified as:

Georgia Weapon Carry License & begin Driver License

In making the above representation under oath, I understand that any person who knowingly and willfully makes a false, fictitious, or fraudulent statement or representation in an affidavit shall be guilty of a violation of O.C.G.A. § 16-10-20, and face criminal penalties as allowed by such criminal statute.

Executed in Atlanta (City), Georgia (State).

Frank Sheffield HALE 5/10/2017
Signature of Applicant Date
Frank Sheffield HALE
Printed Name of Applicant
Atlanta Historical Society Atlanta
Name of Business Center
053732LEX
Business License Acct No.

SUBSCRIBED AND SWORN BEFORE ME ON

THIS THE 10 DAY OF May, 2017

Notary Public Seal
NOTARY PUBLIC / SEAL

My Commission Expires: 08/05/2018

License Year 2017



Georgia

DRIVER'S LICENSE

NUMBER [REDACTED] EXPIRES 09-08-2018

HALE, FRANK SHEFFIELD
303 PEACHTREE BATTLE AVE
ATLANTA GA 30305-4030

SEX	BIRTHDATE	ISSUE DATE	COUNTY	
M	-1960	07-14-2008	060	
HEIGHT	WEIGHT	CSC	FEE	RESTRICTIONS
6-00	175	0 100	30.00	
CLASS	ENDORSEMENTS	TYPE	REG	
C				

ORGAN DONOR

[Handwritten signature]



CONSUMER SERVICES
Mary C. Dept.

CLASS
May 1, 2011
All other...
CLASS



Georgia Weapons Carry License

FRANK SHEFFIELD HALE
303 PEACHTREE BATTLE AVE
ATLANTA GA 30305

SEX: M WGT: 185 Hgt: F0601404634
HGT: 600 EYES: BROWN DOB: [REDACTED] 1960

ISSUED 09/17/2014 EXPIRES 09/16/2019



FULTON



Fulton County Probate Court
136 Pryor St SW, Ste C230
Atlanta, GA 30303

County # 060



F0601404634

[Signature]
Pirbbs T. Toomer
Probate Judge

ISSUE

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REED, and DEPARTMENT OF FINANCE)	
OFFICE OF REVENUE,)	
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Respondents.)	
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CERTIFICATE OF SERVICE

This is to certify that I have served the foregoing **SANCTION RESPONSE OF THE CITY OF ATLANTA** by depositing the same in the U.S. Mail with adequate postage affixed thereto, addressed to:

Mr. Benjamin Vinson, Chairman
Immigration Enforcement Review Board
270 Washington Street, SW, Suite 1-156
Atlanta, GA 30334

Mr. D. A. King
2984 Lowe Trail
Marietta, GA 30066

This 18th day of May, 2017.



M. ALEXANDER HOPE JR.
Associate City Attorney

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LAW DEPARTMENT**
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